

THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION No.15244 OF 2001

ORDER:

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The petitioners claim title to an extent of Ac.10.00 situated in Sy.No.12/7 of Pippaldhari village, Adilabad Mandal and District. It is stated that the said land was purchased by their father in the year 1964 under an unregistered sale deed from one Naimulla Khan. It is not in dispute that the land in question is situated in schedule area, and both the petitioners and their vendor Naimulla Khan, are non-tribals. While so, the 2nd respondent-Special Deputy Collector, Utnoor, initiated proceedings under Section 3 of the Andhra Pradesh Scheduled Areas Land transfer Regulation, 1959, alleging that the petitioners are in possession of the said land in contravention of sub-section (1) of Section 3 of Regulation, 1959, as amended by Regulation 1 of 1970. Having conducted enquiry, the 2nd respondent passed an order dated 20.5.1997, directing ejectment of the petitioners from the land in question. It is not in dispute that in pursuance of the said order, the 3rd respondent-Mandal Revenue Officer, Adilabad, evicted the petitioners, and took possession of the land on 15.6.1997. Since then, the land is being leased out by the 3rd respondent by putting the leasehold rights to public auction every year. While so, the appeal preferred by the petitioners against the order of ejectment dated 20.5.1997, was allowed by the 1st respondent-Agent to Government, by order dated 2.11.1998, holding that the land in question is a Government land and, therefore, the provisions of Regulation 1 of 1959 are not applicable. Accordingly, the order of ejectment passed by the 2nd respondent dated 20.5.1997 was set aside; however, the 1st respondent observed that the 3rd respondent may take action under the provisions of the A.P. (TA) Land Encroachment Act, 1905, to evict the appellants therein, (writ petitioners) from the land in question. The petitioners state that the finding recorded by the 1st respondent that the land in question is a Government land is

incorrect and without any basis; and at any rate, since the order of ejection, passed under Regulation 1 of 1959, was set aside, possession of the land in question shall be restored to them. It is contended that even assuming that the land is a Government land, possession can be taken only by initiating appropriate proceedings under law. Contending that the representation made by them for restoration of possession has not been considered by the respondents, this writ petition is filed seeking a *mandamus* declaring that the inaction on the part of the 1st respondent, in not considering the claim of the petitioners for restoration of possession, is arbitrary and illegal; and consequentially, to direct the respondents to put the petitioners in possession of the said land.

In the counter-affidavit filed by the 1st respondent, it is stated that Sy.No.12/1 of Pippaldhari village covers vast extent, out of which, some area is Government land, and the remaining area is patta land. As per pahani of the year 1964-65, Naimulla Khan, the vendor of the petitioners' father was also one of the pattedar in Sy.No.12, to some extent. However, the name of the petitioners' father has never been shown in the pahanies, so far as the patta land is concerned. The petitioners' father was in possession of the land in Sy.No.12/1, which is a Government land, and his name was shown as cultivator against Sy.No.12/1. Hence, the petitioners are not at all concerned with Sy.No.12/7, which is a patta land belonging to Naimulla Khan. In the circumstances, while deciding the appeal, it was held by the 1st respondent that the order of ejection passed by the 2nd respondent, was erroneous, since the provisions of Regulation 1 of 1959 are not applicable to the Government land. Taking advantage of the fact that Sy.No.12/1 is a Government land the petitioners are claiming title to the land in question, contending that the same was purchased by their father from the pattedar Naimulla Khan. Hence, the petitioners are not entitled for restoration of possession.

I have heard the learned counsel for the petitioners and the learned Government Pleader appearing for the respondents.

A perusal of the order of ejection passed by the 2nd respondent

dated 20.5.1997, shows that the land in occupation of the petitioners was described as Sy.No.12/7 of Pippalhari village to an extent of Ac.10.00, and the ejection was ordered from the said land. However, the documents produced by the petitioners before the 2nd respondent reflected that the sale in favour of their father in the year 1964 was in respect of the land in Sy.No.12/1. Thus, the 1st respondent concluded that the father of the petitioners was in possession and enjoyment of the land to an extent of Ac.10.00 situated in Sy.No.12/1, which is a Government land.

From the material on record, it is clear that there is a serious dispute as to the identity of the land in question. Further, the finding recorded by the 1st respondent that the land in Sy.No.12/1 is Government land also appears to be in conflict with the report submitted by the Mandal Revenue Officer, Adilabad, dated 19.4.1999, wherein it was stated that the writ petitioners are in physical possession of the land in Sy.No.12/1, which is a patta land, but not Government land. Moreover, the finding recorded by the 1st respondent that the land in question is a Government land, has never been challenged by the petitioners, and the same has become final. In case the petitioners were continued in possession of the land found to be a Government land, probably the respondents would not have dispossessed them without initiating proceedings under the Land Encroachment Act. However, since the petitioners were already dispossessed, and particularly there is a dispute with regard to identity of the land in question, no *mandamus* can be issued directing restoration of possession to the petitioners.

Hence, the writ petition is dismissed, however, liberty is granted to the petitioners to work out the appropriate common law remedy, if they so chose. No costs.

(G. ROHINI, J.)

July 10th, 2006.
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THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION No.15244 OF 2001

10th July, 2006.

Between:

Istari and
others.

.. Petitioners.

And

The District Collector and Agent to
Government, Adilabad, district Adilabad and
two others.

.. Respondents.